

## **REMARKS**

This application has been carefully reviewed in view of the above-referenced Final Office Action, and reconsideration is requested in view of the following remarks. No claim amendments are made hereby, but a clean copy of the claims as amended previously is provided for the Examiner's convenience.

### **Request for Interview**

The undersigned respectfully requests the courtesy of an interview at the Examiner's earliest convenience in order to avoid the necessity of appeal. Please contact the undersigned at the telephone number below to arrange a mutually convenient time and date.

### **Regarding the Rejections under 35 U.S.C. §103**

All claims have been rejected based upon obviousness in light of the combination of four references to Giglio, Arnold, Larson and Mouko, all of record. Applicants respectfully traverse the rejections as follows.

In accord with *Graham v. John Deere*, 383 U. S. 1 (1966), the Supreme Court set out a framework for applying the statutory language of §103 in making an objective analysis of obviousness. The Court stated that "under §103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background the obviousness or nonobviousness of the subject matter is determined. Such secondary considerations as commercial success, long felt but unsolved needs, failure of others, etc., might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented."

In order to establish *prima facie* obviousness, it is therefore the burden of the Office to identify each element of the claims in the prior art in order to comply with the requirement to determine the scope and contents of the prior art and further, to provide an explicit analysis as to the reasoning to support a conclusion of obviousness. (See *In re Kahn*, 441 F. 3d 977, 988 (CA Fed. 2006) - "[R]ejections on obviousness grounds cannot be sustained by mere conclusory

statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness”).

In the present case, the cited art fails at least to provide the claim elements that define the contents of Option 43. By way of example, claim 1 states “wherein the DHCP services use DHCP option 43 to define a scope of the subscriber site in which the scope is defined to be equal to a maximum number of potential peer terminals at the subscriber site”. All claims contain a similar feature. In the present Office Action, the Office asserts only that “option 43 is vendor specific information” (page 3, line 7), and that scope is an address pool. The Office then proclaims that “it would be obvious to a person of ordinary skill in the art at the time of the invention to combine the teachings of Giglio for use of DHCP discovery and option 43 to define a scope with the teachings of Mouko ... “. However, there is no teaching, suggestion or hint of using option 43 for such purposes anywhere that the undersigned has identified in the cited art. As vendor specific information, clearly any determination as to the content of a message using option 43 is up to the vendor. The art provides no guidance whatsoever as to use of option 43 for defining a scope of a subscriber site. The DHCP specification to which the Office refers simply defines a protocol for option 43 and reserves it for vendor specific information. The assertion that it is obvious to use option 43 for the purpose of defining scope for provisioning a home entertainment network terminal is without basis in the evidence presented, but instead is merely an impermissible conclusory statement that is no doubt based upon a hindsight reconstruction of the invention in light of Applicants’ teachings.

As noted on page 6 of Applicants’ specification, use of DHCP option 43 limits the number of potential peers that are sought during the discovery process and thereby reduces network traffic during discovery. This use thereby provides for improved efficiency in the provisioning process.

Additionally, Mouko is cited for teaching the selection of host name including a number based on available scope at col 5, line 59-col 6 line 3 and Fig. 8. However, a review of this section of Mouko reveals no such teaching regarding scope. In particular, no such teaching is present as it relates to a scope defined by an option 43 message.

Further, the Office Action is devoid of any articulated reasoning as to why one of ordinary skill in the art would find the above claim feature to be obvious in the absence of explicit teaching in the art. Hence, at least for this reason, it is submitted that all claims are patentable. Reconsideration and allowance are respectfully requested.

In view of these clear distinctions and the distinctions argued in the prior response, Applicant submits that all claims are allowable. Reconsideration and allowance are respectfully requested at an early date.

### **Concluding Remarks**

The undersigned additionally notes that many other distinctions exist between the cited art and the claims. However, in view of the clear distinctions pointed out above in connection with the independent claims, further discussion is believed to be unnecessary at this time. Failure to address each point raised in the Office Action should accordingly not be viewed as accession to the Examiner's position or an admission of any sort. Applicants reserve the right to argue any of the points presented for the rejection of the dependent claims at a later date.

Respectfully submitted,

/Jerry A. Miller 30779/

Jerry A. Miller  
Registration No. 30,779

Dated: 12/19/2008

Please Send Correspondence to:  
Jerry A. Miller  
Miller Patent Services  
2500 Dockery Lane  
Raleigh, NC 27606  
Phone: (919) 816-9981  
Fax: (919) 816-9982  
**Customer Number 24337**

Application No.: 10/797,840